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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

APR 21 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of

TRIAD FAMILY NETWORK, INC.
Winston-Salem, North Carolina
Channel 207C3

POSITIVE ALTERNATIVE RADIO. INC.

) NM No. 93-41
)
) BPED-910227MD
)
)
)
) BPED-911119MC

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In re Applications of)	MM No. 93-41
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TRIAD FAMILY NETWORK, INC.)	BPED-910227MD
Winston-Salem, North Carolina)	
Channel 207C3)	
)	
POSITIVE ALTERNATIVE RADIO, INC.)	BPED-911119MC
Asheboro, North Carolina)	
Channel 207A)	
)	
For Construction Permit for a)	
New Noncommercial Educational)	
FM Station)	

TO: Administrative Law Judge
Joseph P. Gonzalez

**OPPOSITION TO FIRST PETITION TO ENLARGE
ISSUES AGAINST POSITIVE ALTERNATIVE RADIO, INC.**

Positive Alternative Radio, Inc. ("Radio"), through its counsel, submits its Opposition to the First Petition to Enlarge filed herein by Triad Family Network, Inc. ("Triad"), April 8, 1993.¹

Triad seeks the addition of issues against Radio, based on (1) alleged "warehousing" of educational FM channels and the "failure" of Radio to construct pursuant to granted permits and (2) the ability of Radio and its principals to finance proposed construction. Triad is wrong on both counts. Except where

¹ Triad's pleading contained no statement of service. It was received by counsel for Radio April 12, 1993, with a cover letter dated April 8.

precluded by factors beyond Radio's control (e.g. zoning or local permits), the stations authorized are under construction and several virtually ready to go on the air; and Radio and its principals have adequate funding available for completion of all stations for which permits have been issued.

WAREHOUSING

In its desperate efforts to tar Radio with any brush, Triad has provided the Presiding Judge with but half the story. In accusing Radio of warehousing education station permits, Triad has listed some nine permits that have "never" been constructed, despite the clear facts available from Commission files that all granted stations have been assigned call letters and are now under construction and in several cases virtually ready to begin operation.

Triad has cited Domestic Public Land Mobile Radio Service, 53 RR 191, 193 (1983) for a definition of warehousing: "Frequency warehousing occurs when an applicant applies for a frequency for which he has no current need in order to insure he will have the frequencies available in the future should a need develop or to prevent frequencies from being acquired by competitors." Also cited by Triad is Mobile Radio Services, 89 FCC 2d 1199, 1203 (1982). Both cases apply only to Domestic Public Land Mobile Radio Service (DPLMRS) and DPLMRS frequencies are not applicable to mass media services, including non-commercial educational FM stations. More importantly, Triad has presented no scintilla of fact that Radio has engaged in applying for frequencies that it has no

current use for or to prevent use by a competitor. Educational FM applicants may not only seek reserved channels, but also can apply for channels in the non-reserved FM band.

It is indeed axiomatic that if Radio were warehousing FM channels it would not be continuing to construct them and spending thousands of dollars and many hours of Radio principals' time in proceeding with construction.

In each case, the Commission's staff has, upon a showing of good cause, granted extensions of Radio's permits, mindful of the construction progress of each station. (See Exhibits A-D). Triad would have the Presiding Judge overrule the staff and attribute an ulterior motive to Radio solely because it has not completed every facilities authorized to it. As demonstrated by Commission files, Triad has overreached; Radio has in fact put one station on the air, is poised to begin operation of three more, and has progressed substantially with the rest that have been granted permits. If Triad were sincere in the position it now takes, it could have long ago brought to the Commission's attention in each case by informal protest or petition to deny the contention that not only was Radio dilatory but also in violation of the rules. For Triad to now assert the whole is somehow greater than the sum of its parts, i.e., that although Radio was guiltless with respect to each permit, it was somehow in violation of Commission rules when it received more than one permit, is fatuous. One yet uncompleted station does not result in warehousing, but more than one does?

The reasoning of Triad is specious at best, and but demonstrates the ends to which Triad will go in order to discredit Radio.

The foregoing notwithstanding, the Presiding Judge should consider the status of construction of each Radio construction permit. The following facts are of record from Commission files:

WPAR(FM) Hickory, NC - This station has been built and has been on the air for five years. If Radio was interested in "warehousing" frequencies, Hickory would not have been constructed.

WXRI(FM) Winston-Salem, NC - This application was originally mutually exclusive with applications of Mega Educational Communications, Inc. (BPED-900802MD) and that of Golden Rule, Galax, VA (BPED-901005MJ). After a settlement agreement, the Commission's

completed and virtually ready to go on the air.

- WPBI(FM) Martinsville, VA - This application was initially mutually exclusive with the application of WSNC-FM, Winston-Salem University (BPED-870424MA) and was twice amended for technical reasons. ALJ Richard Sippel released a Summary Decision in MM Docket 90-604 granting the Radio application. A permit was issued November 14, 1991, to expire May 14, 1993. Construction of this station is underway with studio and transmitter building completed, and tower and transmitter will be delivered in May.
- WPIR(FM) Bluefield, WV - The original application (filed by Virginia-West Virginia Educational Broadcast Foundation and later assigned to Radio) was mutually exclusive with applications of Bluefield Educational Broadcasting Foundation (BPED-860428MG), Appalachian Educational Communication Corporation (BPED-860728MJ) and Golden Rule Organization Workshop, Inc. (BPED-861229MB). After settlement agreements, the Virginia-West Virginia application was granted by a Memorandum Opinion and Order released June 26, 1989 by ALJ Miller in MM Docket No. 89-115. Form 307 was filed April 12, 1993 (Exhibit C) showing construction progress. Program tests will begin in May or June.
- WPVB(FM) Culpeper, VA - This application was mutually exclusive with that of Alpha Educational Broadcasting Foundation, which was later dismissed. The permit for Culpeper was originally granted April 16, 1989; an application change site to the WMJR site was filed January 19, 1988. Problems arose with respect to use of the WMJR tower (see Williams letter February 7, 1992) but were resolved in Radio's favor (Eads letter February 26, 1993). The amended construction permit for the WMJR site was granted February 26, 1993. A portion of the equipment is on hand; the directional antenna will be constructed by Dielectric Communications, and the transmitter by Phasetek, Inc.
- WPVA(FM) Waynesboro, VA - This application was originally mutually exclusive with that of

Alpha Educational Broadcasting Foundation for Culpeper, VA (BPED-840809ID), which was subsequently dismissed. Protests from the National Radio Astronomy Observatory (NRAO) at Green Bank, WV further delayed grant of the Waynesboro application and necessitated an amendment March 27, 1987. NRAO then withdrew its objection and a permit was granted August 24, 1987. Shortly thereafter, the site owner, who had provided reasonable assurance, changed his mind and Radio was forced to secure a new site. An application was filed, and NRAO again objected to the new site. Yet another amendment was filed March 21, 1991 to satisfy NRAO and by letter of February 7, 1992, the Commission dismissed as moot the NRAO objection and an informal objection filed by James Madison University (WMRA-FM).

A construction permit for the new site was granted June 26, 1992, to expire December 26, 1992. Studio space has been secured and a contract for tower construction signed, to be effective when local building permits are issued. A Form 307 was filed December 18, 1992 (Exhibit D) showing steps taken toward completion of construction.

WPGB(FM) Blountville, TN - This application was mutually exclusive with that of Family Stations, Inc. (BPED-840629IK) for Bristol, TN. Pursuant to a settlement agreement in MM Docket 88-564, the Radio application was granted May 5, 1989, but a permit was not issued. Applicant amended to change site in order to use the WUSJ(FM) tower, June 26, 1991, and to change city of designation from Blountville to Kingsport, TN. The Commission's staff objected on the basis of possible interference to WCQS(FM) and Radio amended to specify a directional antenna. A Commission letter of June 12, 1992 determined the Radio application to be mutually exclusive with that of Gardner-Webb Junior College, Inc., Barclay Springs, NC (BPED-910531ME). Radio amended once again, October 19, 1992, to avoid the exclusivity. The proposed changes from Blountville to Kingsport appeared on cut-off list A-244, released October 30, 1992. To date Radio has not received a construction

WPRH(FM) Galax, VA - This application³ was mutually exclusive with the application of Appalachian Educational Communication Corporation (BPED-870728MJ) which in turn was mutually exclusive with the applications of Golden Rule Organization Workshop (BPED-860509MA) and Bluefield Educational Foundation (BPED-860428MG). After two amendments, ALJ Miller granted the Galax application by Summary Decision released July 14, 1989, but a permit was not issued until May 3, 1990. Applicant filed an amendment to change site, etc. November 5, 1990, which appeared on Cut-Off List B-130, released February 26, 1991. The Commission's letter of February 27, 1991, found the Galax application mutually exclusive with applications of Radio for Winston-Salem (BPED-901119MC) and Mega Educational Communications, Inc. (BPED-900802MD) also for Winston-Salem. The Commission directed a letter to applicant December 12, 1991⁴ regarding possible interference to WBRF(FM), Galax, and requested data from the manufacturer of applicant's directional antenna. A 307 form was filed January 9, 1992 (Exhibit E) and in response to Commission letter, a radiation statement was submitted January 19, 1993. Both the 307 form and the application amendment filed November 5, 1990 were granted April 13, 1993. Triad is correct that a construction permit was originally issued in 1990, but as shown above, applicant filed an amendment to change site, which was not granted until a week ago. The futility of building a station at an old site when an application to change site is pending is recognized throughout the industry and reluctance to construct at a site to be

³ The Galax application, as in the case of Martinsville and Blountville, are not Radio applications, but since Triad has included them in its Petition to Enlarge the facts concerning them have been set forth.

⁴ This, and similar letters have not been reproduced and attached to this pleading, as they are non-controversial and are readily available for inspection in Commission files.

changed can hardly be characterized as "warehousing."⁵

REQUEST FOR FINANCIAL ISSUE

The basis of Triad's attempt to secure additions of financial issues against Radio is its contention that Radio must demonstrate funding to construct its proposed Asheboro station in light of "the excessive number of non-commercial FM facilities which Radio has certified to the Commission that it will construct and operate nine (9) construction permits and four (4) applications" (Petition, p. 9).

Radio is accordingly ready, willing and able to demonstrate to the Presiding Judge that it has more-than-adequate funds to complete construction of all of its proposed stations. It had such financial assurance when it initially filed each and every

turntables, cart machines, transmission line, etc.), all of which are available for use toward construction of the proposed stations, thereby reducing the cost to Radio, since this equipment will be donated free to Radio. Dr. Baker has through his years of experience developed market channels for the purchase of equipment, and for construction of the pending applications and granted construction permits. For example, Radio has established a working relationship with Phasetek, Inc. of Quakertown, PA, for the construction of transmitters, and with Dielectric Communications, Raymond, ME for necessary directional antennas.

In short, as a result of experience, know how, and judicious purchasing, Radio can construct each of its proposed stations on a bare-bones basis, far less expensively than otherwise. For example, estimates for equipment needed and for completion of construction costs have been made by Radio principals, as follows:

Bluefield, WV	\$ 19,600.00
Salem, VA	7,200.00
Dublin, VA	5,400.00
Martinsville, VA	29,390.00
Hickory, NC	42,900.00
Winston-Salem, NC	64,302.00
Waynesboro, VA	45,020.00
Culpeper, VA	72,400.00
Galax, VA	48,565.00
Blountville-Kingsport, TN	49,890.00
	<hr/> \$384,667.00

Radio's principals Vernon H. Baker and Virginia L. Baker have received a line of credit from the Patrick Henry National Bank of

Galax, Virginia ⁷ in the total amount of one million dollars (\$1,000,000.00) secured by real estate owned by them. They have drawn down \$385,785.49 of this, leaving a balance remaining of \$614,214.51. Radio's principals agree to expend as much of this as may be necessary for completion of stations at Winston-Salem, Waynesboro, and Culpeper and for completion of Galax, Bluefield, Salem, Blountville, and Martinsville; and for building Asheboro, Point Pleasant, Union City and Oxford, when and if applications for those cities are granted by the Commission.

Radio principals estimate that construction of proposed stations (applications yet not granted) at Asheboro, Point Pleasant, Union City and Oxford will run:

Asheboro	\$ 49,370.00
Point Pleasant	37,040.00
Union City	24,840.00
Oxford	44,090.00
	<hr/>
Total	\$155,340.00

Thus, Radio will have more than Seventy-Four Thousand Dollars (\$ 74,000.00) as a cushion for any unanticipated expenses, and is adequately financed to construct each and every facility it has proposed.

CONCLUSION

Triad has accused Radio of "warehousing" educational channels. Of the ten stations cited by Triad, one is on the air, three are ready to commence operation, and the remainder are under

⁷ Mr. Carl Davis, Vice President, telephone: (703) 236-7107.

construction; yet uncompleted primarily as a result of factors (zoning, loss of site, etc.) beyond Radio's control. The charge of "warehousing" is frivolous in the extreme.

Likewise, Triad's charges of financial insufficiency are but

I have read the attached Opposition to First Petition to Enlarge Issues Against Positive Alternative Radio, Inc. and confirm that all of the facts contained therein are true and correct.

Signed under penalty of perjury this 20th day of April, 1993.

Vernon H. Baker
Director, Positive Alternative
Radio, Inc.

EXHIBIT A

Federal Communications Commission
Washington, D.C. 20554

FCC 307

EXHIBIT A

3000-USA /
Expires 3/31/91

APPLICATION FOR EXTENSION OF BROADCAST CONSTRUCTION

PROGRESS REPORT ON CONSTRUCTION
FOR WPIB-FM , SALEM , VA.

Ref: File # BHPED-920528JZ

The transmitter has been installed in the transmitter building, and the two-bay antenna has been mounted on the tower. Electric power has been connected to the transmitter building, (See pictures, page 2). The studio installation is about seventy percent complete.

Work remaining to be completed is to install the "dial up" remote control system. The studio transmitter link (STL) from the studio to Tinker Mountain has not been installed. A STL application was applied for in May 1992, and as of the date of this application, a construction permit has not been recieved.

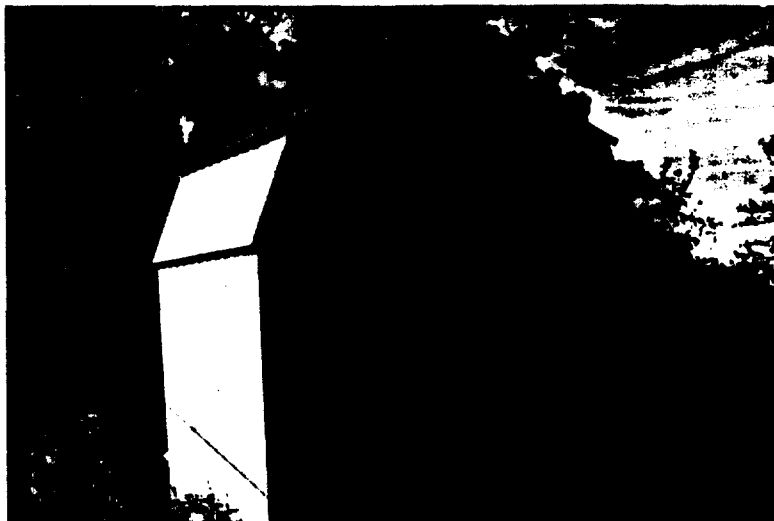
There was considerable delay in the local power company getting power to the site, and since the area is very susceptible to lightning strikes, there was a requirement that power wires had to be place in conduit underground to the transmitter. Since the ground is mostly rock, this took considerable time to install.

During the winter months, Tinker Mountain is covered with ice and snow a great deal of the time, especially in January and February of each year.

It is expected that construction can be completed in the early Spring after the STL construction permit is received.



WPIB-FM's Two-Bay
Antenna being installed
with a crane.



WPIB-FM's Transmitter
building constructed to

EXHIBIT B

APPLICATION FOR EXTENSION OF BROADCAST CONSTRUCTION
PERMIT OR TO REPLACE EXPIRED CONSTRUCTION PERMIT
(CAREFULLY READ INSTRUCTIONS ON BACK BEFORE COMPLETING)

For Commission Use Only

File No.

1. Legal Name of Applicant (See Instruction C)

Positive Alternative Radio Inc.

3. PURPOSE OF APPLICATION:



a. Additional time to construct broadcast station



b. Construction permit to replace expired permit

2. Mailing Address (Number, street, city, state, ZIP code)

4. IDENTIFICATION OF OUTSTANDING CONSTRUCTION PERMIT.

STATEMENT ON PROGRESS
EDUCATIONAL FM WBKW, DUBLIN, VA.

The directional antenna has been erected. The TFT Reciter for STL and FM transmitter has been installed.

The studio space is completed and equipment is about eighty percent complete. The remote control equipment has also been installed.

Some problems has arisen with the equipment as follows:

The STL equipment has developed white noise. The antenna line will not hold pressure and the new transmitter will not develop the required power. Technicians are working on these problems. The transmitter has been moved from the site to a test lab. TFT are advising what new equipment to acquire in order to eliminate the white noise, and the remote control equipment has been removed and is to be retested in the lab along with the transmitter. The antenna system may have to be disassembled in order to find the leak.

The mountain top site is covered with heavy frost and ice many times during the winter months which makes their work difficult or near impossible during these periods.

It is believed that all of these problems can be taken care of by technicians who are working on these problems now.

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

File No(s): BAPED-920327HT

Class of station(s): FM

<input checked="" type="checkbox"/> CONSENT TO ASSIGNMENT: <input type="checkbox"/> CONSENT TO TRANSFER CONTROL: <input type="checkbox"/> CONSENT TO TRANSFER STOCK: Whereby of Control by is effected.	FROM: Golden Rule Organizational Workshop, Inc.
	TO: Positive Alternative Radio, Inc.
Licensee/Permittee: (for transfer only)	

CALL SIGN(S)

WBKW

STATION LOCATION(S)

Dublin, VA.

AUXILIARY STATION(S) (for assignments only)

ALL CURRENTLY AUTHORIZED
AUXILIARY SERVICES

Under authority of the Communications Act of 1934, as amended, the consent of the Federal Communications Commission is hereby granted to the transaction indicated above.

The Commission's consent to the above is based on the representations made by the applicants that the statements contained in, or made in connection with, the application are true and that the undertakings of the parties upon which this transaction is authorized will be carried out in good faith.

The actual consummation of voluntary transactions shall be completed within 80 days from the date hereof, and notice in letter form thereof shall promptly be furnished the Commission by the buyer showing the date the acts necessary to effect the transaction were completed. Upon furnishing the Commission with such written notice, this transaction will be considered completed for all purposes related to the above described station(s).

FCC Form 323, Ownership Report, must be filed within 30 days after consummation, by the licensee/permittee or assignee.

ADDITIONAL REQUIREMENTS FOR ASSIGNMENTS ONLY:

Upon consummation the assignor must deliver the permit/license, including any modifications thereof to the assignee.

It is hereby directed that, upon consummation, a copy of this consent be posted with the station authorization(s) as required by the Commission's Rules and Regulations.

The assignee is not authorized to construct nor operate said station(s) unless and until notification of consummation in letter form has been forwarded to the Commission.

JUN 12 1992

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION

File No. BPED-920424JL

Call Sign WBKW(FM)

MODIFICATION OF CONSTRUCTION PERMIT

FM-ED

Modification No.

(Class of station)

Golden Rule Organization Workshop, Inc.
P.O. Box 889
Blacksburg, VA 24063

Permittee GOLDEN RULE ORGANIZATION WORKSHOP, INC.

Station location: Dublin, VA

Associated Broadcast station:

The Authority Contained in Authorization File No. BPED-88050501
dated November 28, 1989 granted to the Permittee listed above is hereby modified in part as follows:

CP TO REPLACE EXPIRED PERMIT.

DATE OF REQUIRED COMPLETION OF CONSTRUCTION: JAN 10 1993

This modification of construction permit shall be attached to and be made a part of the construction permit of this station.

Except as herein expressly modified, the above-mentioned construction permit, subject to all modifications heretofore granted by the Commission, is to continue in full force and effect in accordance with the terms and conditions thereof and for the period therein specified.

Dated: JUL 10 1992
SVW

FEDERAL
COMMUNICATIONS
COMMISSION



EXHIBIT C